

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 89 of 1989

in

SPECIAL CIVIL APPLICATION No 3670 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES
5. Whether it is to be circulated to the Civil Judge? : YES

STATE OF GUJARAT

Versus

RAJKOT DIST. CO.OPERATIVE BANK LTD

Appearance:

MR. ST MEHTA, A.G.P. for Appellants

MR PM THAKKAR WITH MR SHIRISH JOSHI for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/11/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated July 21, 1986 rendered by the learned Single Judge in Special Civil Application No. 3670/80, by which a direction to the effect that deficit incurred by the Bank should be permitted to be carried from year to year upto that year in which the recovery by way of surcharge is sufficient or more than sufficient to meet the actual expenditure of the current year as well as accumulated deficit or loss of the previous year(s), is issued.

2. The grievance made by the respondent in Special Civil Application No. 3670/80 was that though the Government was recovering expenses incurred for the maintenance of execution machinery by recovery of surcharge under Rule 44(4) of the Gujarat Co-operative Societies Rules, 1965, the Government was not permitting the Bank to carry forward the deficit of the previous year or years in which there was shortfall. Therefore, the respondent had prayed the Court to issue a writ of mandamus directing the appellants to permit the bank to carry forward the excess of surcharge to next year so as to enable the bank to meet the deficit of previous year or years.

3. We may state that similar petition was filed by Ahmedabad District Co.op.Bank Ltd. being Special Civil Application No. 2116/79. The petition filed by the respondent as well as the petition filed by Ahmedabad District Co.op.Bank Ltd., were heard together and disposed of by the learned Single Judge vide common judgment dated July 21, 1986. Feeling aggrieved by the judgment rendered in Special Civil Application No. 2116/79, the appellants had filed Letters Patent Appeal No. 375/90. It was placed for hearing before Division Bench comprising S.Nainar Sundaram, C.J. (as he then was) and S.D.Dave, J. The Division Bench dismissed the appeal by judgment dated March 11, 1993 and confirmed the directions issued by the learned Single Judge.

4. In this appeal, another Division Bench had given certain directions to the appellants by an order dated December 22, 1998, pursuant to which a meeting of the Government officers and representatives of the concerned Bank was held on January 7, 1999 under the chairmanship of Additional Chief Secretary (Co.operation). At the said meeting, certain decisions were taken which are reproduced by the appellants in affidavit dated October 26, 1999 filed by Mr. D.K.Pandya, Joint Secretary (Credit), Agriculture and Co.operation Department,

Sachivalaya, Gandhinagar. They are as under :-

- "(1) If the expenses towards establishment of SRO are more than the income by way of surcharge, the amount of excess expenditure shall be deposited in Govt. treasury by the concerned Bank on an yearly basis.
- (2) The expenses towards establishment of SRO includes pay and allowances, TA, DA, Leave salary, contribution, pension contribution, gratuity contribution, medical reimbursement and bonus etc. paid/payable by Government.
- (3) In case the surcharge recovered in an year is more than the expenses towards establishment of SRO, the excess amount will be carried forward to the succeeding years and adjusted against payment to be made by bank in respect of the establishment of SRO.
- (4) I hereby submit that the proceedings of the meeting held on 7.1.1999 as stated above and the decisions taken therein are as per Annexure-I to this affidavit."

5. We have gone through the decisions which are mentioned in the affidavit of Mr. Pandya as well as the directions which were given by the learned Single Judge and were upheld by the Division Bench while disposing of Letters Patent Appeal No. 375/90. We are satisfied that the decisions are not in conflict with the directions issued by the Court in Special Civil Application No. 2116/79. Under the circumstances, we issue following directions :-

The appellants are directed to issue necessary circular incorporating the decisions as mentioned in the affidavit of Mr. D.K.Pandya as early as possible and preferably within one month from today. It is clarified that recovery of surcharge tax would be governed by the circular which may be issued by the appellants pursuant to the directions given by the Court in this appeal. The appeal accordingly, stands disposed of, with no order as to costs.

(patel)